

HOCK HUA BANK BHD

A

v.

CHAN SIEW YEN

COURT OF APPEAL, PUTRAJAYA

B

RICHARD MALANJUM JCA

HASHIM YUSOFF JCA

TENGKU BAHARUDIN SHAH JCA

[CIVIL APPEAL NO: B-02-402-1998]

11 DECEMBER 2007

C

CIVIL PROCEDURE: *Judgments and orders - Order of sale made by land administrator - Setting aside, appeal against - Whether order for sale irregular - Whether a re-enquiry or a fresh enquiry - Whether land administrator functus officio - National Land Code, s. 34*

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LAND LAW: *Charge - Order for sale - Appeal against setting aside of order for sale made by land administrator - Whether order for sale irregular - Whether a re-enquiry or a fresh enquiry - Whether land administrator functus officio - National Land Code, s. 34*

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This was an appeal by the appellant against the decision of the High Court setting aside a 4th Order for Sale – pertaining to land charged by the respondent in favour of the appellant – made by the Land Administrator ('LA') on 3 March 1998. The 4th Order for Sale was set aside on the basis that it was irregular since it was not a re-enquiry conducted by the LA but a fresh enquiry contrary to an order of the High Court made on 17 July 1996. The primary issues were whether the 4th Order for Sale was in fact a re-enquiry pursuant to s. 34 of the National Land Code ('NLC'), and whether the LA was *functus officio* when he issued it.

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Held (allowing the appeal, and restoring the 4th Order for Sale)

Per Richard Malanjum JCA delivering the judgment of the court:

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- (1) On the facts, all parties were in fact before the LA during the enquiry prior to the issuance of the 4th Order for Sale, and it was also made clear by the LA that he was conducting the enquiry under s. 34 of the NLC and in compliance with the order of the High Court made on 17 July 1996. Thus, there was no basis for the complaint by the respondent on the issuance of the 4th Order. There was no prejudice arising

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- A against any party. It was never the respondent's case that the 1st Order for Sale was regular notwithstanding the erroneous sum stated as recoverable. Indeed, s. 33 of the NLC could have been used by the LA to correct the error if it were merely an accidental defect or omission not affecting the
- B material part of the enquiry. However, in this case, the erroneous sum given as recoverable in the 1st Order for Sale was obviously material in nature, which was discovered after the issuance. As such, reliance on s. 34 of the NLC was in order as suggested by the learned High Court judge when he
- C set aside the 2nd Order for Sale. Section 34(2)(a) of the NLC had been satisfied. In view of this, there was no merit in saying that the LA was *functus officio* when he issued the 4th Order for Sale. He was in fact carrying out a function in compliance with the order of the High Court and under a
- D different section of the NLC that empowered him to act as he did. *Scotch Leasing Sdn Bhd v. Chee Pok Choy & Ors* (dist). (paras 16, 17, 18, 19 & 20)

Bahasa Malaysia Translation Of Headnotes

- E Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi kerana mengenepikan Perintah Jualan ke 4 – berkaitan sebidang tanah yang digadaikan oleh responden untuk manfaat perayu – yang dibuat oleh Pentadbir Tanah ('PT') pada 3 Mac 1998. Perintah Jualan ke 4 diketepikan atas alasan ia tidak teratur
- F disebabkan ia bukan satu siasatan semula yang dilaksanakan oleh PT tetapi adalah satu siasatan baru yang bertentangan dengan perintah Mahkamah Tinggi yang dibuat pada 17 Julai 1996. Isu penting yang berbangkit adalah sama ada Perintah Jualan ke 4 sebenarnya merupakan siasatan semula di bawah s. 34 Kanun
- G Tanah Negara ('KTN'), dan sama ada PT *functus officio* setelah mengeluarkan perintah.

Diputuskan (membenarkan rayuan dan mengekalkan Perintah Jualan ke 4)

- H Oleh Richard Malanjum HMR menyampaikan penghakiman mahkamah:

- (1) Di atas fakta, semua pihak berada di hadapan PT semasa siasatan dijalankan sebelum pengeluaran Perintah Jualan ke 4, dan PT juga menjelaskan bahawa beliau menjalankan siasatan di bawah s. 34 KTN sebagai mematuhi perintah Mahkamah Tinggi bertarikh 17 Julai 1996. Oleh itu, tiada alasan bagi
- I rungutan responden mengenai pengeluaran Perintah ke 4.

Tiada apa-apa prejudis berbangkit terhadap mana-mana pihak. Bukanlah menjadi kes responden bahawa Perintah Jualan Pertama adalah teratur walaupun terdapat kesilapan di situ pada jumlah yang dikatakan boleh dituntut. Malah, s. 33 KTN boleh digunakan oleh PT untuk membetulkan kesilapan jika ia hanyalah satu kecacatan atau ketinggalan yang tidak disengajakan dan yang tidak menjejaskan bahagian penting siasatan. Bagaimanapun, dalam kes ini, kesilapan pada jumlah yang dikatakan boleh dituntut di dalam Perintah Jualan Pertama adalah penting pada sifatnya, dan diketahui hanya selepas pengeluaran. Oleh yang demikian, kebergantungan kepada s. 34 KTN adalah teratur sepertimana yang dianjurkan oleh yang arif hakim Mahkamah Tinggi ketika beliau mengenyahkan Perintah Jualan ke 2. Seksyen 34(2)(a) KTN telah dipatuhi kehendaknya. Berdasarkan keadaan ini, adalah tidak bermerit untuk berhujah bahawa PT telah *functus officio* setelah mengeluarkan Perintah Jualan ke 4. Beliau sebenarnya telah melaksanakan tanggungjawab yang selaras dengan perintah Mahkamah Tinggi tetapi di bawah sekyen lain KTN yang memberinya kuasa untuk bertindak sepertimana yang dilakukannya. *Scotch Leasing Sdn Bhd v. Chee Pok Choy & Ors* (dibezakan).

Case(s) referred to:

Scotch Leasing Sdn Bhd v. Chee Pok Choy & Ors [1997] 2 CLJ 58 SC (*dist*)

Legislation referred to:

National Land Code, ss. 33, 34(2)(a), 263

For the appellant - K Ananthan; M/s Skrine & Assoc

For the respondent - Prasad Abraham; M/s Prasad Abraham & Assoc

[*Appeal from High Court, Shah Alam; Originating Motion No: MT2-21-52-98*]

Reported by Suresh Nathan

JUDGMENT**Richard Malanjum JCA:****Introduction**

[1] This is an appeal against the whole of the decision of the High Court at Shah Alam given on 9 June 1998 which set aside the 4th Order for sale made by the Land Administrator on 3 March 1998.

A Basic Facts Of The Case And Chronology Of Events

[2] The appellant, now amalgamated with Public Bank, gave banking facilities to its customer one Leong Yew Chin (the principal borrower) trading under the name 'West Malaysia Frozen Food Company'. As part of the securities for the facilities the respondent on 15 May 1978 agreed to charge in favour of the appellant her property, Q.T. (M) 504, Lot P.T. 1203, Mukim Ampang on 3rd party charge up to a limit of RM300,000.

[3] The principal borrower failed to meet the repayments of the facilities hence the appellant commenced foreclosure proceeding on the charged land.

[4] On 7 May 1996 the 1st Order for sale in the form of Form 16H was made by the Land Administrator pursuant to an application by the appellant. However, the sum recoverable stated was RM11,811,009.28 which was erroneous. It prompted the solicitors for the appellant to write to the Land Administrator to amend the figure. The Land Administrator thus unilaterally issued a 2nd Order for sale with an amended sum recoverable of RM5,905,504.64.

[5] Dissatisfied with the manner in which the 2nd Order for sale was issued the respondent appealed to the High Court which on 17 July 1996 made the following order:

[6] Pada pendapat saya pindaan yang dibuat oleh Land Administrator terhadap perintah adalah tidak terator. Oleh itu saya memerintahkan supaya Inquiry diadakan semula.

[6] However even before getting a copy of the sealed order of the High Court the Land Administrator went on to conduct another enquiry pursuant to s. 263 of the National Land Code 1965 (NLC) and issued a 3rd Order for sale with the sum recoverable stated as RM2,491,630.59.

[7] Unhappy with the how the 3rd Order for sale was issued the respondent once again appealed to the High Court against the granting of the 3rd Order for sale.

[8] On 21 April 1997 the 3rd Order for sale was set aside for nullity by another High Court judge on the ground that the Land Administrator at the time of making the 3rd Order for sale was *functus officio* since he issued it before being served with the sealed copy of the order of the High Court which set aside the 2nd Order for sale.

[9] The solicitors for the appellant thus wrote on 25 April 1997 to the High Court judge who set aside the 2nd Order for sale on 17 July 1996 seeking for clarification on the order made. A

[10] The learned High Court judge replied through his secretary with clarification, *inter alia*: B

Oleh itu pada pendapat Mahkamah, kedua-dua pihak perlu dipanggil semula oleh Pentadbir Tanah sebelum sesuatu perintah hendak diperbetulkan atau dipinda. Untuk tujuan tersebut tidak perlulah diadakan satu siasatan baru (fresh enquiry). Memadai siasatan dibuka semula dan kedua-dua pihak diberi peluang untuk mengemukakan hujah mereka sebelum Pentadbir Tanah membuat keputusan. C

[11] Guided by the reply the Land Administrator held an enquiry on 3 March 1998 pursuant to s. 34 of the NLC in compliance with the order of the High Court dated 17 July 1996. The 4th Order for sale was thus issued with the sum recoverable stated as RM2,478,432.01. The respondent appealed to the High Court. D

[12] On 9 June 1998 the 4th Order for sale was set aside by the High Court judge on the basis that it was irregular since it was not a re-enquiry conducted by the Land Administrator but a fresh enquiry contrary to order of the High Court made on 17 July 1996. E

[13] Dissatisfied with the decision of the High Court the appellant appealed to this court. F

[14] On 30 May 2005 we allowed the appeal and restored the 4th Order for sale given on 3 March 1998. The respondent has applied for leave to appeal to the Federal Court. As such we now state the reasons for our decision. G

Before This Court

[15] The primary issues before us are whether the 4th Order for Sale was in fact a re-enquiry pursuant to s. 34 of NLC and whether the Land Administrator was *functus officio* when he issued it. H

Findings Of The Court

[16] At the outset we say that this matter has been unnecessarily dragged far too long. We note that the core of the objection is quite technical in nature. All parties were in fact before the Land Administrator during the enquiry prior to the issuance of the 4th I

- A Order for sale. It was also made clear by the Land Administrator, at least reading from the documents before us, that he was conducting the enquiry under s. 34 and in compliance with the order of the High Court made on 17 July 1996. As such we find no basis for the complaint by the respondent on the issuance of the 4th Order. We do not find any prejudice arising against any party.

- C [17] It is to be noted that it was never the case of the respondent that the 1st Order for sale was regular notwithstanding the erroneous sum stated as recoverable.

[18] Indeed s. 33 of NLC could have been used by the Land Administrator to correct the error if it was merely accidental defect or omission not affecting the material part of the enquiry.

- D [19] But in this case the erroneous sum given as recoverable in the 1st Order for sale was obviously material in nature which was discovered after the issuance. As such reliance on s. 34 of NLC is in order as suggested by the learned High Court judge when he set aside the 2nd Order for sale. We would say that circumstance (a) of sub-s. (2) of s. 34 has been satisfied.

- F [20] In view of our foregoing finding we do not think there is any merit to say that the Land Administrator was *functus officio* when he issued the 4th Order for sale. He was in fact carrying out a function in compliance with the order of the High Court and under a different section of the NLC which empowered him to act as he did. This present case is distinguishable from *Scotch Leasing Sdn Bhd (In receivership) v. Chee Pok Choy & Ors* [1997] 2 CLJ 58 where the learned judge set aside the same order for sale given nine months earlier and perfected without considering the applicability of s. 34 of NLC.

- H [21] For the above reasons we allowed the appeal and restored the 4th Order for sale issued by the Land Administrator on 3 March 1998. Costs to be taxed and paid to the appellant. Deposit to be refunded to the appellant.

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